

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.1116 of 1999**

- Devendra Kumar, aged about 21 years, S/o Phuldas Dahria, R/o Satnamipara, Githpuri, P.S. Palari, District Raipur (CG).

**---- Appellant****Versus**

- State of Madhya Pradesh (now State of Chhattisgarh).

**---- Respondent**


---

|                      |   |                                    |
|----------------------|---|------------------------------------|
| For Appellant        | : | Mrs. Indira Tripathi, Advocate.    |
| For Respondent/State | : | Mr. Suryakant Mishra, Panel Lawyer |

---

**Hon'ble Shri Justice I.S. Uboweja****CAV JUDGMENT****Delivered on 03-08-2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 12-04-1999 passed by the 1<sup>st</sup> Additional Sessions Judge, Balodabazar, District Raipur, in Sessions Trial No. 359 of 1998, whereby and whereunder learned 1<sup>st</sup> Additional Sessions Judge after holding the appellant guilty for commission of offence, convicted the appellant under Section 307 of the IPC and sentenced him to undergo RI for five years and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo additional R.I. for one year.
2. Conviction is impugned on the ground that without any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. As per case of the prosecution, on the fateful day of 28-7-1998 at village Githpuri, Ravi, younger brother of appellant beat Tarunkumar

(PW/1) son of Bhojram (PW/9) in the play-ground. Tarunkumar reported the incident to his father. On this, Bhojram (PW/9) rebuked Ravi, who reported the matter to his brother/appellant. Thereafter, appellant came to Bhojram and assaulted him by pointed article over his face and hand as a result of which Bhojram sustained injuries. The incident was witnessed by Tilakram (PW/10), Jaklu and Basawan (PW/11).

4. Bhojram (PW/9) went to Outpost Gidhpuri and made a report about the incident against the appellant on the basis of which first information report (Ex.P/12) was lodged. Complainant Bhojram (PW/9) was sent for medical examination to Government Hospital, Palari where he was examined by Dr. R.K. Tamrakar (PW/7) who found the following injuries vide Ex.P/9 :-

“(i) Semilunar incised wound over right side of forehead 3” above right eye brow, 4”x 1/2”x bone deep transversely bleeding on fourth;

(ii) Trangular incised wound with flap of skin over left fore-arm lower 1/3 medial flap aspect, bleeding 8” x8”x3”x6” sized.

(iii) Lacerated wound over left lip mucous membrane area 3/4 dimension. He opined that all the above injuries were simple in nature.”

5. During the course of investigation, Police seized bloodstained piece of *fursi* stone, bloodstained shirt, bloodstained soil and plain soil from spot and prepared memo vide Ex.P/2. Spot map was prepared by Patwari vide Ex.P/6, panchnama of spot was prepared vide Ex.P/7. Accused/appellant was taken into custody and he made a disclosure statement vide Ex.P/5 on the basis of which one sword was seized at his instance vide Ex.P/4. Accused/appellant was sent to hospital for

medical examination and his medical report is Ex.D/3. Seized articles were sent to Forensic Science Laboratory, Raipur for chemical examination vide Ex.P/15 and a report thereof was received vide Ex.P/16.

6. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, charge-sheet was filed before the Court of Additional Chief Judicial Magistrate, Balodabazar, who in turn committed the case to the Court of Session, Balodabazar, from where learned Additional Sessions Judge received the case on transfer for trial.
7. In order to prove the guilt of the accused person, the prosecution has examined as many as thirteen witnesses in support of its case. The accused person was examined under Section 313 of the Cr. P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication in the crime in question. Defence has also examined defence witnesses Santoshilal (DW/1) and Jivrakhan (DW/2) in support of its case.
8. After affording opportunity of hearing to the parties, learned 1<sup>st</sup> Additional Sessions Judge, convicted and sentenced the appellant in the aforesaid manner.
9. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
10. Learned counsel appearing for the appellant has not disputed the incident and the injuries caused by the appellant to complainant

Bhojram. Her argument is that complainant Bhojram had received simple injury which was not fatal to his life and as much as it was a case under Section 324 of IPC and learned Additional Sessions Judge has committed an illegality by holding conviction under Section 307 of IPC. She further submits that taking into consideration the nature of injuries sustained by the complainant, at the most the offence would fall within the ambit of Section 324 of IPC. She also submits that in the present case, the appellant was in custody from 30-07-1998 to 10-09-1998 i.e. for 1 month and 13 days and thereafter he was in custody from 12-04-1999 to 23-06-1999 i.e. 2 months and 13 days and thereby the appellant served the total jail sentence for about 3 months and 26 days, therefore, no useful purpose would be served by sending him again to jail and he may be adequately sentenced by enhancing the fine amount as he was facing prosecution since 1998.

11. *Per contra*, learned State counsel opposing the criminal appeal supports the impugned judgment.
12. On due consideration of evidence adduced on behalf of the prosecution to prove the assault by sharp edged weapon and thereby caused injuries to Bhojram, I do not find any ground for interference in the finding of facts. As regards the question of sentence, it may be considered by nature of injuries. MLC (Ex.P/9) was done by Dr.R.K. Tamrakar (PW/7), according to him on 29-07-1998 he had examined complainant Bhojram and found injuries as mentioned above. In court evidence he clearly stated that the injuries sustained by the

complainant Bhohram were simple in nature. He has not stated that the injuries sustained by the complainant were grievous in nature and same were fatal to life. There is no evidence on record to prove that the complainant was admitted in hospital for medical treatment, therefore, it would be presumed that the injuries sustained by the complainant were simple in nature. Thus, the prosecution case also does not fall within the purview of Section 320 of IPC. Though the appellant used the sword for assaulting Bhojram, but the complainant sustained simple injuries which is evident from medical report (Ex.P/9). The trial Court while convicting and sentencing the appellant under Section 307 of IPC has not considered the relevant aspects of the matter and thereby committed the illegality.

13. For the foregoing discussion, I find that conviction and sentence awarded by the court below to the appellant under Section 307 of IPC is not proper and same is also not sustainable under the law.
14. In the result, the appeal is partly allowed. Conviction of the appellant under Section 307 of IPC is altered to Section 324 of IPC and the sentence awarded to the appellant is reduced to the period already undergone by him.
15. It is stated that the appellant is in on bail. His bail bonds shall remain operative for a period of six months in view of Section 437-A of Cr.P.C.

(I.S. UBOWEJA)

**Judge**